

## REMARKS/ARGUMENTS

The application has been amended to correct the cited informalities, to distinguish the claimed invention over the cited prior art, and to place the application, as a whole, into a *prima facie* condition for allowance. Care has been taken to avoid the introduction of any new subject matter into the application as a result of the foregoing amendments.

Claims 1 - 16 have been rejected under 35 U.S.C. 112, second paragraph, as being purportedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner has stated that the phrase "a cover operably configured to be positioned atop the uppermost one of said at least one substantially open-topped shipping tray of the at least one shipping unit" is purportedly confusing and inaccurate when there is only one open-topped shipping. The Examiner has asserted that "there is no uppermost tray when there are less than 2 trays for comparison". The Examiner has further asserted that it is not clear whether applicant is positively claiming the "at least one other shipping tray".

Applicant respectfully traverses the Examiner's bases for rejection of the claims. One of ordinary skill in the art having the disclosure before them would readily understand that if there was only one tray in a stack, that the single tray would necessarily be the "uppermost tray", for purposes of knowing where the cover would go. Notwithstanding the foregoing traversal, Applicant has amended claim 1 to positively recite at least two trays. Accordingly, Applicant respectfully submits that the Examiner's basis for rejection of claims 1 - 16 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, should be deemed overcome, and reconsideration and withdrawal of the rejection are respectfully solicited.

Claims 1 - 12, 14 - 16 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Young, U.S. 5,390,847 or Muise, Jr., U.S. 6,354,487, in view of Flanagan et al., U.S. 6,050,419 and/or Bullock, U.S. 6,227,779. Claim 13 has been rejected under 35 U.S.C. 103(a) in view of the foregoing references, further in view of

the "Corrugated Common Footprint" reference cited by Applicant. Applicant respectfully traverses the Examiner's substantive bases for rejection of the claims.

Young, U.S. 5,390,847 and Muise, Jr., U.S. 6,354,487 both show trays having removable lids, which trays are stackable, and provided with stacking tabs that fit into recesses or openings in the bottoms of like trays when the trays are stacked. Neither of the references, as the examiner has conceded, teaches or suggests the provision of a binding strap member.

Flanagan et al., U.S. 6,050,419, teaches a method for wrapping articles on a pallet, in which a wrapping member is wrapped around the sides (but not the top or bottom) of a plurality of stacked articles. As such there is no teaching or suggestion of extending a binding strap across the top, down the sides, and across the bottom, of a plurality of stacked articles.

Bullock, U.S. 6,227,779 teaches a method for securing boxes in an intermodal carrier. Adhesive strips are used to extend across the sides or sometimes portions of the tops of the boxes, and to attach the boxes to the inner surfaces of the sidewalls of the carrier. There is no teaching or suggestion for a binding strap across the top, down the sides, and across the bottom, of a plurality of stacked articles, and there cannot be, inasmuch as the straps that contact the boxes are not placed until the boxes are in position in the carrier, making it impossible to extend the straps underneath the boxes.

Applicant's invention, of amended claim 1, however, clearly sets forth that the at least one binding member is configured for placement across the top, down the sides and across the bottom of a plurality of stacked trays. As such, Applicant respectfully submits that Applicant's invention of amended claim 1 patentably distinguishes over all of the cited references, whether taken alone or in combination. Reconsideration and withdrawal of the rejection of claim 1, and allowance thereof are respectfully solicited.

Inasmuch as dependent claims 2 – 16 merely serve to further define the subject matter of claim 1, which itself should be deemed patentable, claims 2 – 16 likewise should be deemed to patentably distinguish over the cited prior art. Reconsideration and withdrawal of the rejection of claims 2 – 16, and allowance thereof, are respectfully solicited.

Applicant submits that the application as a whole is in a *prima facie* condition for allowance, and reconsideration and allowance of the application are respectfully requested.

Should anything further be required, a telephone call to the undersigned at (312) 456-8400 is respectfully requested.



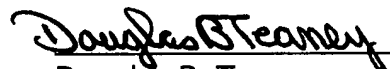
Dated: 7-7, 2004

Respectfully submitted,  
GREENBERG TRAURIG

  
Richard D. Harris  
One of Attorneys for Applicant

### CERTIFICATE OF MAILING

I hereby certify that this AMENDMENT AND COMMUNICATION is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on 7-7, 2004.

  
Douglas B. Teaney

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